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Supreme Court of the United States

OCTOBER TERM, 1933.

No. 526.

EBBA PAGEL, ANNIE COREY, CLARA HALLBOM AND CHARLES HALLBOM, *Petitioners,*

vs.

EDWARD PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM; JOHN G. MACLEAN, AS ADMINISTRATOR OF THE ESTATE OF SELMA HALLBOM; LILLIE F. MCCRIMMON, AS ADMINISTRATRIX OF THE ESTATE OF FRED R. HALLBOM; LILLIE F. MCCRIMMON, AS GUARDIAN OF FRED R. HALLBOM, JR.; ARLYENE ALINDER AND LILLIAN GABRIELSON, *Respondents.*

BRIEF FOR RESPONDENTS (BELOW NAMED) IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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BRIEF FOR RESPONDENTS (APPEARING) IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

ARGUMENT.

The petitioners in support of their petition for a writ of certiorari make four specifications of error enumerated on page 7 of their brief.

The first specification is general in its nature and will stand or fall with the remaining three. That is, unless one or more of the remaining specifications is sustained the first must necessarily fall with the rest.

The second and third specifications raise the question whether or not funds consisting of the commuted value of

War Risk Insurance in the hands of the administrator of a deceased soldier's estate, as in the case at bar, are subject to application for payment of claims allowed against the estate of the deceased soldier, so far as necessary, before distribution to the heirs at law of the deceased soldier.

The petitioners in their argument against the subjection of said funds to the payment of claims rely entirely upon the so-called Exemption Statute, 38 U. S. C. A. 454, cited in the third specification and set out verbatim in part on page 8 of their brief. Therefore, in considering the question of the payment of claims the field is limited to a discussion of the third specification.

PAYMENT OF CLAIMS.

The petitioners admit that the Minnesota Supreme Court correctly held that the fund in question became a general asset of the estate of the deceased soldier and admit that in that regard the Minnesota Supreme Court properly followed the law as enunciated by this Court in the case of *Singleton vs. Cheek,* cited and quoted on page 62 of the record. They contend, however, that the Exemption Statute, 38 U. S. C. A. 454, hereinbefore referred to, is applicable and prohibits the payment of any claims allowed against the estate of the deceased soldier before distribution of the residue to the soldier's heirs at law.

The respondents are of the opinion that this contention no longer raises a substantial federal question. This Court, in its decision in the case of *Spicer vs. Smith,* 53 S. Ct. 415, has enunciated the limitations applicable to the exemption statute in question. By that decision this Court established the rule of law, as pointed out by the Minnesota Supreme Court in the case at bar, page 63 of the record, that Section 454 of

Title 38, U. S. C. A., has no application to moneys which have been paid under the War Risk Insurance Act to the guardian of an incompetent soldier. It would, therefore, seem to logically follow that said section cannot have any application to moneys paid under the War Risk Insurance Act to the administrator of the estate of a deceased soldier, for distribution under the intestacy laws of the state of the soldier's residence.

If it is correct that the exemption statute referred to is inapplicable, then there remains nothing to support petitioners' claim that the Minnesota Supreme Court erred in holding that the fund in question was subject to payment of claims allowed against the estate of the deceased soldier before distribution of the residue to the insured's heirs at law.

The Minnesota Supreme Court after considering the decision of this Court in the *Singleton vs. Cheek* case, *Spicer vs. Smith,* and this case (*Pagel as Adm'r vs. MacLean as Adm'r,* 283 U. S. 266, 75 L. Ed. 1023), reached the conclusion that it was required to hold, at least by implication, from those decisions that the fund in question is available for the payment of claims of the creditors of the deceased soldier, page 63 of the record.

The Circuit Court of Appeals for California in the case of *Brown vs. United States,* 65 F. (2d) 65, after considering this Court's decision in the *Singleton vs. Cheek* case, *supra,* reached the conclusion that under said decision in the *Singleton vs. Cheek* case the payment of expenses of administration and debts allowed against the insured's estate, if any, is a prerequisite to distribution of the residue.

The facts in the *Brown vs. United States* case show that Oliver Winfield entered the United States Army in June, 1918, and in September of that year he died in France. His

$10,000.00 War Risk Insurance policy named his *estate* as beneficiary.

A nuncupative will was admitted to probate in Inyo county, California, which provided "all of his property and money" which was "of the value of not exceeding $100.00" should go to Brown (Adm'r) and the latter's wife. The will was uttered in February, 1918, and reduced to writing in November, 1926.

The California statutes provided that the estate bequeathed in a nuncupative will must not exceed $1,000.00 in value.

The United States (appellee) contended that as the insurance could not be made payable to anyone not within the class of permissible beneficiaries specified in the Act of May 29, 1928, Chap. 875 (38 U. S. C. A. 511), it necessarily follows that this result cannot be accomplished indirectly.

The Circuit Court cites from the *Singleton vs. Cheek* case, *supra*, the following:

> "By that amendment, the rule, which, upon the happening of the contingencies named in the prior acts, limited the benefit of the unpaid installments to persons within the designated class of permittees, was abandoned, and 'the estate of the insured' was wholly substituted as the payee."

The Circuit Court then in the course of its opinion says:

> "This statement clearly indicates that any of the insurance money that thus becomes payable to his estate must be distributed as his general estate is distributed, and therefore the statutory provisions as to the class of persons who could be directly named in the policy itself as beneficiaries do not affect the distribution, if and when the insurance becomes payable in whole or in part to the 'estate of the insured'."

(Footnote): "For the same reason, administration expenses and debts of the insured's estate would be payable, if necessary, out of the insurance money paid to the estate. *Whaley vs. Jones,* 152 S. C. 328, 149 S. E. 841 (1929), and other cases cited, 284 U. S. 497-498, Note 3, 52 S. Ct. 257-259, * * * as 'in accord with the text.' Contra *Mason's Adm'r vs. Mason's Guardian,* 239 Ky. 208, 39 S. W. (2d) 211 (1931)."

"There would seem to be no distinction in this respect whether the insured died intestate or testate. This result was reached where the insured died testate, in *In re Young's Estate* (Cal. App. 1931), 1 P. (2d) 523, and *Ogilvie's Estate,* 291 Pa. 326 (1927), cited in Note 3, page 497 of 284 U. S., 52 S. Ct. 257, 259, in the Singleton case, as in accord with the text."

The Court continues:

"The uncontroverted finding of the District Court was that decedent had no relatives; any property not effectively bequeathed by the will would therefore escheat. *Calif. Civ. Code,* §1386. Under the statute, the United States is not obligated to pay the insurance to the administrator and then to come into the Probate Court and reclaim it because of the escheat. If it 'would escheat,' it 'shall not be paid.' In other words, escheat is a defense to payment of the obligation originally incurred or perhaps more accurately, a limitation or condition subsequent inherent in the obligation itself."

The Court then holds that statute is *pro tanto* applicable in case part only of the estate would escheat, and continued:

"But, before distribution, administration expenses and claims allowed against the estate must be paid. The balance only would escheat. The obligation of the gov-

ernment, therefore, is measured by the $1,000.00 for the legacy plus the sum required for the claims allowed and the administration costs, less the value of any other property in the estate."

The cases cited by petitioners on pages 5 and 12 of their brief as being in conflict with the decision of the Minnesota Supreme Court in the instant case and as holding in line with the conclusion contended for by the petitioners were decided prior to the handing down of the decisions in either the *Singleton vs. Cheek* or the *Spicer vs. Smith* cases, or both, and therefore, the Courts in said cited cases did not have an opportunity to be guided by the legal constructions of the statutes in question and rules of law found in those cases. It may be interesting as well as enlightening to examine the cases so cited.

The case of *Mixon vs. Mixon* was decided prior to the *Spicer vs. Smith* and involved the question of whether or not the administrator of the soldier's estate should apply funds, such as those in question in this case, in the payment of claims against the distributees before making such distribution. The Court held that the funds were not subject to such application before distribution. That holding would seem logical because regardless of whether or not the funds in the administrator's hands were War Risk Insurance funds or other assets the same would not be applied in the payment of claims against distributees in the course of the administration unless done through some other legal proceeding.

It is a question if that Court would have enunciated its reasoning relative to Section 454, *Title 38*, U. S. C. A., found in its opinion, if the *Spicer vs. Smith* case had been decided by this Court at that time.

The case of *Mason's Adm'r vs. Mason's Guardian* was decided prior to the *Singleton vs. Cheek* case and the *Spicer vs. Smith* case and did not involve the payment of claims of creditors against the soldier's estate and whatever was said by the Court relative to the funds not being subject to the soldier's debts was merely a matter of dictum and had no bearing on the final decision of the Court in that case.

While the *Hunt vs. Slagle* case was decided a short time after the *Singleton vs. Cheek* case, no reference is made in the opinion to the latter case and therefore it must be presumed that the same had not been called to the Court's attention before its decision was made, particularly because it cites favorable the Hallbom and other cases discredited by this Court in the *Singleton vs. Cheek* case and based its decision, which did not involve the payment of claims against the deceased soldier, upon theories contrary to those enunciated by this Court in the *Singleton vs. Cheek* case.

The *Butler vs. Cantley* case involved the matter of preference of War Risk Insurance funds in the hands of an administrator in a closed bank.

While this case was decided after the *Singleton vs. Cheek* case there is no reference made in the opinion thereto and it must be assumed that when the Court made its decision it had no knowledge concerning the same.

That case was decided contrary to the later holding of this Court in the *Spicer vs. Smith* case and the presumption is that the Court would have decided differently if it had been passing on the same question later with the *Spicer vs. Smith* case decision before it.

The case of *Perrydore vs. Hester* was decided November 18, 1926, and was limited to a case involving funds accruing prior to the Act of March 4, 1925, and, of course, the Court

in that case was far removed from the guidance of the *Singleton vs. Cheek* and the *Spicer vs. Smith* cases.

The *Sponberg vs. Lidstrom* case was decided by the Minnesota Supreme Court prior to the case at bar and therefore is of no value in so far as it may be conflicting with that Court's decision in the case at bar.

The case of *Reivich vs. United States* was decided a long time prior to the *Singleton vs. Cheek* and the *Spicer vs. Smith* decisions and therefore cannot be any guide as to what interpretation that Court would make relative to the payment of claims in a case similar to that at bar with those decisions before it.

RES JUDICATA.

The petitioners in the fourth specification of error raises the claim of *res judicata,* but the Minnesota Supreme Court in its decision in the instant case, pages 60 and 61 of the record, discusses very fully why its former decision in this case could not be invoked as *res judicata,* also why the principle of the "law of the case" would not apply and cites numerous authorities for so holding. In fact that issue is thoroughly briefed by the Minnesota Supreme Court in its decision and for that reason respondents will refrain, in the interest of brevity, from further burdening the Court with discussions bearing on the fourth specification of error, except to call the Court's attention to the following found in *R. C. L.,* Vol. 1, Perm. Supp. on page 393 under subdivision 11 of paragraph 187, APPEALS AND ERRORS, to-wit:

> "Decision of Intermediate Court.—A principle of law laid down by an intermediate appellate court on an appeal is not binding on that court, on a second appeal, where the highest appellate court has, since the first

appeal, and in another case, decided the precise question contrary to the rule announced upon the first appeal, and a decision of an intermediate appellate court, which has been reversed or modified on appeal, and held for naught, is not binding upon it, upon a subsequent appeal of the same case, as to any point decided upon the first appeal. 1 *A. L. R* 1275, note."

CONCLUSIONS.

The appearing respondents are impressed with a conviction that in view of the decisions by this Court in the cases of *Singleton vs. Cheek, supra,* and *Spicer vs. Smith, supra,* and the statement of issues involved in this case on the former appeal, *Pagel vs. MacLean,* 283 U. S. 266, 51 S. Ct. 416, 75 L. Ed. 1023, the petition for writ of certiorari in the case at bar does not present a substantial federal question, but if after consideration your Honorable Court concludes that the matter presented should be heard and determined, your respondents earnestly contend that the decision of the Minnesota Supreme Court is correct, in accordance with law and should be sustained.

Respectfully submitted,

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